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SUPREME COURT
of the United States

OCTOBER TERM, 1924.

No. 583

WALTER M. PIERCE, as Governor of the State of Oregon; Isaac H. Van Winkle, as Attorney General of the State of Oregon, and Stanley Myers, as District Attorney for Multnomah County, State of Oregon, *Appellants,*

vs.

THE SOCIETY OF THE SISTERS OF THE HOLY NAMES OF JESUS AND MARY, *Appellee.*

No. 584

WALTER M. PIERCE, as Governor of the State of Oregon; Isaac H. Van Winkle, as Attorney General of the State of Oregon, and Stanley Myers, as District Attorney for Multnomah County, State of Oregon, *Appellants,*

vs.

HILL MILITARY ACADEMY, Appellee.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES, FOR THE DISTRICT OF OREGON.

BRIEF OF WM. A. WILLIAMS AS AMICUS CURIAE.

STATEMENT.

In presenting the following remarks upon the issues before the Court, by grace of Court and courtesy of Counsel, I speak for and in behalf of the

North Pacific Union Conference of Seventh-Day Adventists, operating, within the territorial jurisdiction of the statute, thirty-three church schools embracing grades one to eight, employing forty-five teachers, with an enrollment of 900 pupils, and school property valued at $47,000.00, and academies depending upon said schools for patronage, employing twenty-two teachers with an enrollment of three hundred pupils and school property valued at $76,-000.00; all being a part of a general school system of the Seventh-Day Adventist Denomination operating in every state of the union and every civilized country of the globe, and carrying its primary instruction into nearly every uncivilized country.

The rights of those for whom I speak are equally affected with the rights of the appellees, by the Oregon Law, which forms the issue in this case.

The Appellants refer to the law as a "Compulsory School Law", but it is not, alone, that; for a compulsory school law already existed upon the Statute Books of Oregon, and hence it is something more.

The two laws, one called the "old law" and the one in question here, called the "New Law", have been clearly and sufficiently set forth by other briefs herein.

The appellees are incorporated and acquired their charters under the laws existing upon the statute books of the State of Oregon ever since 1864, and which still exist and offer incorporation to any private persons as well as denominational and educational societies similar to appellees; and under the same law appellees could, incorporate tomorrow.

We claim that the statute in question is unconstitutional as being contrary to the 14th Amendment of the Constitution of the United States, and as impairing the obligations of contracts, and as having the effect of annulling vested rights.

We also claim that this question should be viewed not as one arising in the formation of a government, or as one arising where no grant has been made and no rights have been vested on the faith of the law as it existed at the incorporation of the appellees.

POINTS AND AUTHORITIES.

Natural Rights.

Point I.

This statute attempts to extinguish natural rights, infringes the provisions of the Constitution and is void.

Meyer vs. Nebraska, 262 U. S. 390, 67 L. ed. 1042, 43 Sup. Ct. Rep. 625, 29 A. L. R. 1446.

Point II.

The Schools conducted by the appellees are not inherently dangerous to the peace, morals or happiness of society and are not opposed to the general public policy of the State of Oregon.

O. L. Secs. 6998-7014.

Point III.

The parent has the common law, or natural, right to direct the education of the child.

Denton vs. James, 107 Kansas 729, 193 Pac. 307,
12 A. L. R. 1146, 1152.

Civil Rights.

Point I.

The state has no power to abrogate a vested right or to impair the obligation of contracts.

12 C. J. 956, Sec. 486.
Const. of Or., Art. XI, Sec. 2.
1 B. & C.'s Codes & Statutes of Oregon 60.
Lorntsen vs. Union Fisherman's Co., 71 Ore. 540, 543-545.
First National Bank vs. Multnomah State Bank, 87 Ore. 423, 433-434.

Police Power.

Point I.

Police power cannot be delegated to a board or an individual to be exercised at discretion.

12 C. J. 911, Sec. 42; *Noel vs. People,* 187 Ill. 587, 58 N. E. 616, 52 L. R. A. 287.
22 Am. & Eng. Ency. Law (2 ed.) 920 and n. 7.

Point II.

Police power is a grant of authority from the people to their governmental agents.

Spann vs. Dallas, 111 Tex. 350, 235 S. W. 513, 19 A. L. R. 1387.

Point III.

The exercise of police power on any occasion must be reasonably necessary and the manner of its exercise must be reasonable and appropriate.

Schiller Piano Co. vs. Ill. Northern Utilities Co., 288 Ill. 580, 123 N. E. 631, 11 A. L. R. 454.

ARGUMENT.

Natural Rights

As the decision of this case must, at last, rest upon a few fundamental principles and not upon any "new thing", a statement made by Hon. Elihu Root in an address to a meeting of the Bar Association, San Francisco, March 21, 1922, lays down the principle which I have accepted as a guiding light:

> "We are in danger of getting lost in this labyrinth. But two things are certain: First, that in the midst of all this multitude of decisions and of statutes, if we are to get right, we must get back to the fundamental principles upon which our law rests. . . . In the thousands and hundreds of thousands of decisions and of statutes there is danger of losing the thread, there is danger of forgetting the principles."

The appellant has discussed the police power of the state as if the people had surrendered their absolute rights in the process of forming the government; but these were excepted from the compact and declared inalienable and are guaranteed by the Constitution of the United States. These guaranties constitute Articles of Faith and have been acted upon for generations.

It is admitted that persons, on entering into the social compact, "give up some rights", but it is not admitted that they give up any natural or absolute rights, for the protection of which the social compact was formed. Blackstone in discussing this question says:

> "This law of nature, being coeval with mankind and dictated by God himself, is, of course, superior in obligation to any other. It is binding over all the globe in all countries and at all times; no human laws are of any validity, if contrary to this; and such of them as are valid derive all their force and all their authority, mediately or immediately, from this original."
>
> Shars. Bl. Com. 41.

The earliest organization known to man is the family, the strongest unit in any government; but this law tends to weaken family discipline, supplants parental authority and substitutes Honor the State, for "Honor thy Father and thy Mother". It deprives the parent of natural rights and equally deprives the child.

The Court, in *Denton vs. James*, supra, says on this subject:

"Man has no higher right or interest or happiness than that for which the words "family" and "home" stand. Very often it is said, with a touch of derision, that a child is not a chattel, and a parent has no property in his child giving him right to custody, which is very true. The interest which a parent has in the nurture of his own offspring, and in nearness to them for that purpose, lies in a different plane from that occupied by property; it transcends property. On the child's side, it has no higher welfare than to be reared by its parents. The state has no higher welfare than to have children reared by their parents, and free government is instituted for the protection and benefit of parenthood as one of the natural rights which the citizen possesses."

Denton vs. James, 12 A. L. R. 1151.

The natural rights of the parent for which we contend in this case preceded the state, and the government, formed to "secure these", certainly ought not to take any action which would subvert the very purpose of its creation. If the position of the appellant is correct the government becomes "a house divided against itself".

These natural rights have been protected by every Bill of Rights declared in any government at any time, and are always spoken of as existing, but never as bestowed by government.

The position of the appellant cannot be strengthened by any claim that the statute in question was passed by the majority vote. Every bill of rights has been interposed between power and people, aggressive power usurped by princes or by majorities, and in this matter Mr. Cooley says:

> "And these governing powers will be no less disposed to be aggressive when chosen by majorities, than when selected by the accident of birth, or at the will of privileged classes. Indeed, if during the long struggle for constitutional liberty in England, covering the whole of the seventeenth century, importance was justly attached to a distinct declaration and enumeration of individual rights on the part of the government, when it was still in the power of the governing authorities to infringe upon or to abrogate them at any time, and when, consequently, the declaration could possess only a moral force, a similar declaration would appear to be even of more value in the Constitution of the United States, where it would constitute authoritative law, and be subject to no modification or repeal, except by the people themselves whose rights it was designed to protect, nor even by them except in the manner by the Constitution provided."
>
> Cooley Const. Lim. 5th Ed. 315 * p. 258.

Man was not made for governments, but governments for man. Man preceded governments, man created governments. He created them to make him secure in the enjoyment of his natural, inalienable rights:

> "We hold these truths to be self evident, that all men are created equal; that they are endowed by their Creator with certain inalienable rights; that among these are life, liberty and the pursuit of happiness; that, to *secure* these rights, governments are instituted among men, deriving their just powers from the consent of the governed."

and the Constitution followed

"to *secure* the blessings of liberty."

In *Spann vs. Dallas,* supra, the court says:

> "Constitutional powers can never transcend constitutional rights. The police power is subject to the limitations imposed by the constitution upon every power of government; and it will not be suffered to invade or impair the fundamental liberties of the citizen, those natural rights which are the chief concern of the constitution and for whose protection it was ordained by the people. All grants of power are to be interpreted in the light of the maxims of Magna Charta and the common law as transmuted into the bill of rights; and those things which these maxims forbid cannot be regarded as within any grant of authority made by the people to their agents. Cooley, Const. Lim. 209. In our constitution the liberties protected by the Bill of Rights are, by express provision, 'excepted out of the general powers of the government." It is declared that they 'shall forever remain inviolate,' and that 'all laws contrary thereto shall be void'."

19 A. L. R. 1390-1391.

As expressed in the Declaration of Independence, our natural rights are endowments of the Creator. Among these endowments, is the right to bring in children, rear and educate them. The family was the first institution established by the Creator among men. He also established the first educational system and put it in the family.

> "And these words which I command thee this day shall be upon thy heart and thou shalt teach them diligently unto thy children; and thou shalt talk of them when thou sittest in thy house and when thou walkest by the way, and when thou liest down and when thou risest up."

And when the first code of civil law was given, this educational system was left untouched.

In his concurring opinion in *Butchers' Union, etc., Co. vs. Crescent City, etc., Co.*, 111 U. S. 746, Justice Field said:

> "As in our intercourse with our fellow-men certain principles of morality are assumed to exist, without which society would be impossible, so certain inherent rights lie at the foundation of all governmental action, and upon a recognition of them alone can free institutions be maintained. These inherent rights have never been more happily expressed than in the Declaration of Independence, that new evangel of liberty to the people; 'We hold these truths to be self evident', that is, so plain that their truth is recognized upon their mere statement, 'that all men are endowed', not by edicts of Emperors or decrees of Parliament or acts of congress, but 'by their Creator, with certain inalienable rights,' that is, rights which cannot be bartered away or given away or taken away except in punishment of crime, 'and that among these are life, liberty and the pursuit of happiness, and to secure these', not grant them but secure them, 'governments are instituted among men, deriving their just powers from the consent of the governed'. Among these inalienable

> rights, as proclaimed in that great document, is the right of men to pursue their happiness, by which is meant the right to pursue any lawful business or vocation, in any manner not inconsistent with the equal rights of others, which may increase or develop their faculties, so as to give them their highest enjoyment."

The same great Judge in his dissenting opinion in the Slaughter House Cases, 16 Wall. 36, said that the

> "Fourteenth Amendment was intended to give practical effect to the Declaration of 1776 of inalienable rights, rights which are the gift of the Creator, which the law does not confer, but only recognizes."
>
> Taylor, Due Process of Law, Sec. 266, pp. 491-492.

Constitutions create no individual rights, but recognize them, and their business is to protect man in the enjoyment of his natural rights. His Creator made man a free moral agent and the constitution has made no effort to improve on him. Mr. Blackstone says:

> "That constitution or frame of government, that system of laws, is alone calculated to maintain civil liberty, which leaves the subject entire master of his own conduct, except in those points wherein the public good requires some direction or restraint."
>
> Sharswood's Bl. Com. 126.

And again:

> "For the principal aim of society is to protect individuals in the enjoyment of those absolute rights, which were vested in them by the immutable laws of nature, but which could not be preserved in peace without that mutual assistance and intercourse which is gained by the institution of friendly and social communities. Hence it follows, that the first and primary end of human laws is to maintain and regulate absolute rights of individuals. Such rights as are social and relative result from, and are posterior to, the formation of states and societies: so that to maintain and regulate these is clearly a subsequent consideration."

Id. 124.

And a note to the same thus expresses the thought:

> "Absolute rights of individuals though occupying less space in codes of law than their relatitve rights or rights of property, are nevertheless by far the most important."

And this, further:

> "The great end of society is to secure the wealth and happiness of its members."

This has a different sound from a statement quoted in the brief of appellant submitted in the Court below, and proclaimed in the affirmative argument printed in the official pamphlet preceding the election at which the statute was adopted, to-wit, "Our nation supports the public school for the sole

purpose of self preservation." Neither does it sound much like the claim of the propagandists of this law, under their assumed name "A. & A. S. R. School Committee," scattered broadcast in their campaign for its adoption, boldly asserting: "The child is first a national child. He belongs to the nation even before he belongs to himself. His education is first national and after that personal." This agrees fully with the spirit of the statute and contains the Spartan idea of submerging the individual in his citizenship.

In the case of *Meyer vs. Nebraska,* supra, the Court said:

> "The problem for our determination is whether the statute, as construed and applied, unreasonably infringes the liberty guaranteed to the plaintiff in error by the 14th Amendment. 'No state . . . shall deprive any person of life, liberty, or property without due process of law.'
>
> "While this Court has not attempted to define with exactness the liberty thus guaranteed, the term has received much consideration, and some of the included things have been definitely stated. Without doubt, it denotes not merely freedom from bodily restraint, but also the right of the individual to contract, to engage in any of the common occupations of life, to acquire useful knowledge, to marry, establish a home and bring up children, to worship God according to the dictates of his own conscience, and, generally, to enjoy those privileges long recognized at common law as essential to the orderly pursuit of happiness by freemen."
>
> 29 A. L. R. 1449.

There is not even a pretense of any sudden emergency calling for the enactment of this law to suppress institutions which have been operating for generations under the general laws of the state of Oregon for the very purpose of creating and maintaining such schools; and, as said by Mr. Justice McReynolds in *Meyer vs. Nebraska,* supra:

> "That the state may do much, go very far, indeed, in order to improve the quality of its citizens, physically, mentally, and morally, is clear; but the individual has certain fundamental rights which must be respected. . . .
>
> "The means adopted, we think, exceed the limitations upon the power of the state, and conflict with rights assured. . . . The interference is plain enough, and no adequate reason therefor in time of peace and domestic tranquility has been shown."
>
> 29 A. L. R. 1451.

On the other hand, the statute postponing its own operation for several years, shows conclusively that no sudden emergency called it forth and that no fear existed of approaching injury to the health, peace, or morals of the community. The statute is theoretical rather than practical.

The state of Oregon impliedly admits that private and denominational schools are not inherently injurious to the community and that the state is not opposed to them from any standpoint of public policy; for the reason that it confers upon corporations that may be organized under the general statutes full power to carry on the business of such schools, and makes special provision for their incorporation by statutes which have been in force and acted upon ever since 1864. (O. L. Secs. 6998 et seq.)

CIVIL RIGHTS.

After having granted charters to the appellees to carry on the business which the statute under consideration attempts to abolish, and after the appellees have acquired not only patronage for their schools, but large and valuable properties, the state cannot by a proper exercise of police power obliterate any of these rights, or destroy a dollar's worth of property, and this principle has been enunciated by the Supreme Court of Oregon clearly in the cases cited above.

The present law attacked in these proceedings abrogates that grant without the consent of the appellees, and has the effect of cancelling their charters. This may not be done.

In the case of *Lorntsen vs. Union Fishermans Co.*, 71 Ore. 540, Justice Burnett says, at page 544, in referring to a corporation organized under the provisions of the corporation laws of the state:

> "From *Dartmouth College vs. Woodward*, 4 Wheat. 518 (4 L. Ed. 629), down to the present time the principle has been maintained that such an offer and acceptance constitute a contract between the state and the corporation, the obligation of which cannot be impaired by any subsequent legislation. It is a compact which is within the protection of Article I, Sec. 10 of the national constitution forbidding any state to pass any law impairing the obligation of contracts, and Article I, Section 21, of our state constitution, containing the same prohibition. The identical question has been settled by the utterances of Mr. Chief Justice Thayer in *Liggett*

vs. Ladd, 17 Or. 89, 100 (21 Pac. 133, 137)."

At the time of the incorporation of the appellees and the beginning of their business under their charters granted by the state of Oregon, Article XI, Sec. 2 of the State Constitution read as follows:

> "Corporations may be formed under general laws, but shall not be created by special laws, except for municipal purposes. All laws passed pursuant to this section may be altered, amended, or repealed, but not so as to impair or destroy any vested corporate rights."
>
> B. & C.'s Codes & Statutes of Oregon, p. 60.

And no amendment of the constitution can operate to defeat the rights of these appellees; for in *First National Bank vs. Multnomah State Bank,* 87 Ore. 433, 434, considering the effect of this section of the constitution upon contracts, Mr. Justice Burnett said:

> "Neither can it be made to impair the obligation of a subscription contract made before its adoption so as to double the original liability. So far as the increased responsibility is concerned, the utmost effect it can have is to operate in favor of the depositors in a bank incorporated since the constitution was so amended."
>
> "From the time the decision was rendered in the famous case of *Dartmouth College vs. Woodward,* 4 Wheat. (U. S.) 518 (4 L. Ed. 629), to the present it has been uniformly held that any legislation that impairs the terms or condition of a pre-existing contract is void."

State ex rel. vs. Sears, 29 Ore. 580 (43 Pac. 482, 46 Pac. 785, 54 Am. St. Rep. 808).
Lorntsen vs. Union Fishermans Co., 71 Ore. 540, 544 (143 Pac. 621).

"The amendment of the clause of the constitution referred to cannot be invoked to impair the obligations of the pre-existing contract between the stockholders of the defendant bank and that corporation, nor to abridge the agreement existing between such stockholders and the state of Oregon, and this being so, the decree is reversed and one will be entered here granting to the plaintiff the relief prayed for in its complaint."
87 Or., 433-434.

POLICE POWER.

The statute in question vests the County Superintendent with authority to determine when a child "is not being properly taught", but subjects his discretion to no rule or guide, and leaves him free to exercise such discretion arbitrarily. In the case of *Noel vs. People*, supra, the Court had under consideration the power of the legislature to vest arbitrary discretion in a board of pharmacy, the particular section reading as follows:

> "The board of pharmacy may in their discretion issue permits to persons, firms or corporations engaged in business in villages or other localities, empowering them to sell the usual domestic remedies and proprietary medicines under such restrictions as the board of pharmacy may deem proper."

58 N. E. 617.

And the Court says:

> "It is manifest that section 8 vests an arbitrary power in the board of pharmacy to say who shall and who shall not sell the usual domestic and proprietary remedies in villages and other localities, and just exactly what they are allowed to sell. Section 8 in no way regulates or controls the discretion vested thereby in the board. The official discretion conferred upon the board is unregulated, and not subjected to any permanent provisions operating generally and impartially. . . . A law which thus invests any board or body of officials with a discretion which is purely arbitrary and which may be exercised in the interest of a favored few, is invalid. . . . The board is thus authorized to confer a privilege upon one person, firm, or corporation, and to deny the same privilege to and other person, firm, or corporation, and is not required to be governed, in so doing, by any fixed rules or regulations, but may be moved thereto only by its own caprice or favoritism. Laws thus conferring discretionary and arbitrary power upon statutory officials are not only invalid for the reasons already stated, but amount, in effect, to a delegation by the legislature of its legislative functions to the board or officials in question."
>
> Id. 618.

In *Schiller Piano Co. vs. Ill. Northern Utilities Co., supra,* the Court says:

"The measure of reasonableness of a police regulation is not necessarily what is best, but what is fairly appropriate under all the circumstances. Legislation in the exercise of the police power must have relation to and be appropriate for the protection, preservation, and promotion of the public health, safety, morals, or welfare. An act which has no tendency to affect or endanger the public in any of those particulars, and which is entirely innocent in character, is not within the police power. These general principles are universally recognized, and will be found discussed and numerous authorities referred to in 6 R. C. L. 193 et seq. Under the police power, the state has authority to enact legislation to regulate the charges and business of a public utility corporation; but if such legislation operates as a confiscation of private property, or constitutes an arbitrary or unreasonable infringement on personal or property rights, it will be held void, as in violation of the constitutional guaranty that no person shall be deprived of his property without due process of law."

11 A. L. R. 458.

While we admit that police power is inherent in the state, we believe that it is no more an inherent power of the state than is the right of self-defense in the individual; yet, if I use my right of self-defense before it is reasonably necessary, I become a trespasser.

THE TWO LAWS.

The two laws called in the briefs the "old law" and the "new law", are referred to as having the same purpose; but the effect of the new law, whatever its purpose, is to deprive the appellees of natural and vested rights. Its effect can be ascertained by the simple process of subtraction, and when we take the old law from the new, we find this difference to be the abolition of private and parochial schools, and vested rights.

No reason has been shown for the reclaiming of the rights and privileges of these appellees. It cannot be justified by the theory of the appellant as expressed in its brief in the Court below that "Our nation supports the public schools for the sole purpose of self-preservation".

Upon that theory, the state would be organized for its own sole existence, but the Declaration of Independence proclaims that governments are instituted to protect men in the very rights which this objectionable law destroys.

Just why the appellant should profess espousal of the cause of Religious Liberty is not clear, unless it be to disavow the plain tendency of this law to abolish such freedom.

The consequences of the law are plainly visible in the principle which leavens it; and as "a little leaven leaveneth the whole lump." Where would this movement end, unchecked, and what individual right is safe?

Much has been said about the state as *parens patriae*, but *parens patriae* may not step into the family circle as a supplanter while the parents perform their natural duties in the exercise of their natural rights.

This is the same old contest of the ages between prince and people, governors and governed, majorities and minorities,—the encroachment of misguided power upon natural and inalienable rights; and to this tendency of power we owe every defense erected across its path, as the Magna Charta, the Declaration of Independence, the Constitution of the United States, and, finally the Supreme Court, and these, one and all, have said, "Thus far, and no farther."

Respectfully submitted,

WM. A. WILLIAMS.
Attorney at Law

Supreme Court of the United States

OCTOBER TERM, 1924.

WALTER M. PIERCE, as Governor of the State of Oregon, ISAAC H. VAN WINKLE, as Attorney General of the State of Oregon, and STANLEY MYERS, as District Attorney for Multnomah County, State of Oregon, Appellants, *v.* THE SOCIETY OF THE SISTERS OF THE HOLY NAME OF JESUS AND MARY.	No. 583.

BRIEF AMICI CURIAE ON BEHALF OF THE DOMESTIC AND FOREIGN MISSIONARY SOCIETY OF THE PROTESTANT EPISCOPAL CHURCH.

Statement of Facts.

The Domestic and Foreign Missionary Society of the Protestant Episcopal Church in the United States of America, on whose behalf this brief is submitted, was instituted in the year 1820, was fully organized by the General Convention of said Church in the year 1835, and was duly incorporated by special act of the Legislature of the State of New York in the year 1846. It was instituted and incorporated for the purpose of conducting

general missionary operations in all lands, and for more than a century has been steadfastly pursuing such purpose. Its membership is deemed to embrace all the members of said Church, and now numbers over two million. In addition to its membership innumerable other citizens throughout the United States are in sympathetic accord with its purposes and cooperate with it in the furtherance of its work. It holds in sacred trust large sums of money and other property given both by the living and the dead for the accomplishment of its purposes in the United States and in foreign lands, which it is administering in accordance with the wishes of the donors.

The multitude of members of the Society regard the present alarming increase in the criminality of the young as the necessary consequence of the exclusion of religious influences from the public schools of the nation. The Society conducts, as a part of its work, a department of religious education, through which it assists and cooperates with the teachers in private schools throughout the country in making religious training a part of the education of boys and girls. No attempt is here made to enumerate the many private schools throughout the country in which the influence of the Protestant Episcopal Church is exerted through religious training and the inculcation of Christian ideals, but reference is made to certain of them which are closely identified or affiliated with that communion and with which the contact of the membership and cooperation of this Society are most intimate and controlling.

Of this class of these schools, which numbers more than 100, in every section of the country, 75 reported an enrollment for the scholastic year

1924-5 of 10,065, including children under sixteen years of age and children who have not completed the eighth public school grade. These schools are therefore directly or indirectly vitally interested in the attempted amendment of Section 5259 of Oregon Laws, which is the subject of this suit. At least one of them, St. Helen's Hall, at Portland, Oregon, is directly affected by such attempted amendment. This school was founded in 1869 and is in charge of the Sisters of St. John the Baptist, a Society of women members of the Protestant Episcopal Church. Its present enrollment is about two hundred. If this attempt to amend the law is successful, this institution will be seriously injured. Its patronage will be limited; its income will be diminished; its property will be reduced in value; its teachers will be hindered in the pursuit of their chosen work, and many citizens of the State of Oregon, as well as citizens of other states, will be deprived of the privilege of giving their children the advantages of the religious and moral training which they themselves had in this school and have found from experience to be helpful in after life.

While the religious education and training in these schools are in accordance with doctrines of the Protestant Episcopal Church, their enrollment is by no means restricted to those affiliated with that communion, since 4,571 of the enrollment above given are affiliated with other churches or no churches or are unaccounted for.

These schools are too numerous to be individually mentioned, but among them are such institutions as Groton and St. Mark's, of Massachusetts; St. Paul's, of New Hampshire; Kent, Pomfret, The Rectory School and St. Margaret's, of Connecticut;

St. Agatha's, St. Agnes', St. Mary's and Trinity, of New York; St. Mary's and St. Bernard's, of New Jersey; Academy of the Protestant Episcopal Church, Pennsylvania; National Cathedral School and St. Alban's, of the District of Columbia; Woodberry Forest, Virginia Episcopal High School, St. Catherine's, Stuart Hall, St. Christopher's, and Chatham Episcopal Institute, of Virginia; St. Mary's, of North Carolina; Cathedral School, of Florida; Porter Military Academy, of South Carolina; St. Mary's and Sewanee Military Academy, of Tennessee; Harcourt Place, of Ohio; Grafton Hall, St. John's Military Academy, and Kemper Hall, of Wisconsin; St. Mary's and St. Alban's, of Illinois; All Saints', of South Dakota; Brownell Hall, of Nebraska; St. Katharine's, of Iowa; Shattuck, of Minnesota; College of the Sisters of Bethany, and St. John's Military Academy, Kansas; St. Mary's Hall and St. Mary's College, of Texas; Rowland Hall, of Utah; Harvard School, of California; St. Helen's, of Oregon; St. Margaret's, of Idaho; and St. Paul's, of Washington.

The influence of some of these schools in implanting in boys and girls correct ideals of life and conduct is too well known to need comment. Many of the most eminent and forceful figures of the life of to-day can trace their culture and influence to the religious and moral training by precept and example received in their early youth in one of these schools. There are many who realize that to such early training they owe the ideals and the strength of character which have enabled them to withstand the temptations of modern life, and they earnestly wish to give to their children and grandchildren the same priceless opportunity.

This Society gives substantial financial support

to a number of schools in the Appalachian Mountain region, where religious education and training are given to children who would otherwise receive little or none.

The American Church Institute for Negroes was incorporated in 1906 by Bishop Greer of New York, Bishop Lawrence of Massachusetts, Bishop Lines of New Jersey, Dr. George Foster Peabody, and others, for the purpose of promoting education among the negroes of the South under the auspices of the Protestant Episcopal Church. The aim of the Institute is not primarily to make Episcopalians, but the patriotic purpose of bridging the chasm of racial prejudice by means of religious education and training and the developing Christian aims and ideals. There are ten schools engaged in this work, with an enrollment of nearly 4,000, at an annual cost of approximately $450,000, about a third of which is contributed by this Society through the American Church Institute.

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With unanimity thoughtful people attribute this weakening of the moral fiber of our time to the lack of religious and moral training, particularly in children. Again quoting Judge Talley of the Court of General Sessions of New York, whose words, by reason of his extraordinary opportunities to judge, have great weight:

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"It is not the immigrant who is swelling the ranks of our young criminals. The immigrant, trained in a religious school nine times out of ten, is law abiding. But his son and his daughter, privileged to attend our great schools, are the ones who come before me day after day.

"I am not speaking as a politician. I am speaking as an expert. I am not a theorist. The reason I dare speak is that every day, every hour, I am face to face with the real thing here, with the facts."

Judge Hoyt, of the Children's Court, New York City, has said:

"Most important of all is the question of its (the child's) religious training and its moral guidance. The opportunity must be given every child to learn of religious truths and to worship God. The form of the religion does not concern the authorities; that is a matter to be decided by its parents, its family and its ecclesiastical advisers; but it should be strengthened and confirmed in its chosen faith and encouraged to follow its precepts. If our experience in the Children's Court has proven one thing, it is—that religion is essential in the training of children and that no lasting good can be achieved when their spiritual development is neglected."

The honored Chief Justice of this Court, in a public address in New York in October, 1920, said:

"Education is an essential basis for successful popular government, and it is predicated on the assumption that with education men

> will make good citizens, will see clearly what the public interest is and will use their influence and vote and activities to promote that interest. But education alone, without the instilling of moral principle, and without the strengthening of that morality with religious spirit, may often prove to give to citizens a knowledge without the moral impulse to use it properly. Therefore, where freedom of religion prevails, where religion cannot be united by government with education, the burden upon the churches to make up for their lack is greater, and the danger from a failure of the churches is more threatening."

This noble expression is but the fitting to our time the spirit which animated the founders of the Republic. It was Washington, in his Farewell Address, who said:

> "Let us with caution indulge the supposition that morality can be maintained without religion. Whatever may be conceded to the influence of refined education on minds of peculiar structure, reason and experience both forbid us to expect that national morality can prevail in exclusion of religious principles. * * *
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> "Of all dispositions and habits which lead to political prosperity, religion and morality are indispensable supports. In vain would that man claim the tribute of patriotism who should labor to subvert these great pillars of human happiness."

In this connection it may be noted that M. Taine, the great French philosopher and lucid teacher of positiveness, did not dare rear his children according to his own philosophy, but had them instructed in moral duty by a Protestant pastor whom he esteemed.

Fully realizing the truth and wisdom expressed in the foregoing quotations, this Society, through its Department of Religious Education, is striving to revive in the soul of youth the virtues of self-control and obedience to authority, both human and divine. But this noble enterprise is seriously menaced by the attempted amendment to the Oregon School Law, not only because it directly affects the Society's membership and work in the State of Oregon but because in principle it is destructive of such work everywhere.

If this attempted amendment becomes the law, it is almost inevitable that similar attempts will be made in other states threatening the whole structure of religious education and morality. This Society will be hindered in the pursuit of its chartered purposes and many of its members will be deprived of the cherished privilege of serving God and their country by devoting their time and their means to the training of children in morality and virtue through the teachings of the Bible.

The membership of this Society, through its General Convention assembled in Portland, Oregon, on September 19th, 1922, adopted the following resolution:

> "WHEREAS, there has been introduced into the Congress of the United States a bill to regulate further the Public School system of the nation; and
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> "WHEREAS, legislation has also been attempted in different parts of the country, which, if successful, will have the effect of eliminating all schools under the direction of the Church, and all other private schools giving education through the elementary grades; and

"WHEREAS, we desire to express our approval of the Public School system in our land and our sympathy with all well considered efforts to develop and improve the public schools; and

"WHEREAS, we also believe that the English language should be the sole medium of instruction in all our public Schools; therefore, be it

"RESOLVED, the House of Bishops concurring, that the General Convention expresses its abiding conviction that instruction in religion is an essential element in all true education, and that Church Schools have an indispensable part in our educational system; and be it

"FURTHER RESOLVED, the House of Bishops concurring, that this General Convention goes on record as deprecating and opposing any and all movements seeking to secure legislation having as its natural result the injury and perhaps the destruction, of the Church schools of our land."

On November 7, 1924, this Society, through the National Council, acting as its board of directors, adopted the following resolution:

"RESOLVED, that the National Council places itself on record as being against the Oregon Compulsory School Bill.

"RESOLVED, that the matter of properly representing the National Council in the litigation relative to the Oregon Compulsory School Law now before the United States Supreme Court be referred to Mr. Hotchkiss with full power."

The Law.

We have examined the brief for the appellee and fully concur in the arguments therein presented, and accept the citations therein as sustaining such arguments. We therefore do not undertake to repeat here the discussion of the law, relying upon the able presentation thereof in the brief for the appellee.

We therefore respectfully urge upon this Honorable Court the affirmance of the decree appealed from.

Respectfully submitted,

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Attorneys for The Domestic and Foreign Missionary Society of the Protestant Episcopal Church in the United States of America, as *Amici Curiae*,
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34 Nassau Street,
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CHARLES H. TUTTLE,
CHAS. E. HOTCHKISS,
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Supreme Court of the United States

OCTOBER TERM, 1924.

WALTER M. PIERCE, as Governor of the State of Oregon; ISAAC H. VAN WINKLE, as Attorney General of the State of Oregon, and STANLEY MYERS, as District Attorney for Multnomah County, State of Oregon, Appellants,	No. 584.
v.	
HILL MILITARY ACADEMY.	

BRIEF AMICI CURIAE ON BEHALF OF THE DOMESTIC AND FOREIGN MISSIONARY SOCIETY OF THE PROTESTANT EPISCOPAL CHURCH.

Statement of Facts.

The Domestic and Foreign Missionary Society of the Protestant Episcopal Church in the United States of America, on whose behalf this brief is submitted, was instituted in the year 1820, was fully organized by the General Convention of said Church in the year 1835, and was duly incorporated by special act of the Legislature of the State of New York in the year 1846. It was instituted and incorporated for the purpose of conducting

general missionary operations in all lands, and for more than a century has been steadfastly pursuing such purpose. Its membership is deemed to embrace all the members of said Church, and now numbers over two million. In addition to its membership innumerable other citizens throughout the United States are in sympathetic accord with its purposes and cooperate with it in the furtherance of its work. It holds in sacred trust large sums of money and other property given both by the living and the dead for the accomplishment of its purposes in the United States and in foreign lands, which it is administering in accordance with the wishes of the donors.

The multitude of members of the Society regard the present alarming increase in the criminality of the young as the necessary consequence of the exclusion of religious influences from the public schools of the nation. The Society conducts, as a part of its work, a department of religious education, through which it assists and cooperates with the teachers in private schools throughout the country in making religious training a part of the education of boys and girls. No attempt is here made to enumerate the many private schools throughout the country in which the influence of the Protestant Episcopal Church is exerted through religious training and the inculcation of Christian ideals, but reference is made to certain of them which are closely identified or affiliated with that communion and with which the contact of the membership and cooperation of this Society are most intimate and controlling.

Of this class of these schools, which numbers more than 100, in every section of the country, 75 reported an enrollment for the scholastic year

1924-5 of 10,065, including children under sixteen years of age and children who have not completed the eighth public school grade. These schools are therefore directly or indirectly vitally interested in the attempted amendment of Section 5259 of Oregon Laws, which is the subject of this suit. At least one of them, St. Helen's Hall, at Portland, Oregon, is directly affected by such attempted amendment. This school was founded in 1869 and is in charge of the Sisters of St. John the Baptist, a Society of women members of the Protestant Episcopal Church. Its present enrollment is about two hundred. If this attempt to amend the law is successful, this institution will be seriously injured. Its patronage will be limited; its income will be diminished; its property will be reduced in value; its teachers will be hindered in the pursuit of their chosen work, and many citizens of the State of Oregon, as well as citizens of other states, will be deprived of the privilege of giving their children the advantages of the religious and moral training which they themselves had in this school and have found from experience to be helpful in after life.

While the religious education and training in these schools are in accordance with doctrines of the Protestant Episcopal Church, their enrollment is by no means restricted to those affiliated with that communion, since 4,571 of the enrollment above given are affiliated with other churches or no churches or are unaccounted for.

These schools are too numerous to be individually mentioned, but among them are such institutions as Groton and St. Mark's, of Massachusetts; St. Paul's, of New Hampshire; Kent, Pomfret, The Rectory School and St. Margaret's, of Connecticut;

St. Agatha's, St. Agnes', St. Mary's and Trinity, of New York; St. Mary's and St. Bernard's, of New Jersey; Academy of the Protestant Episcopal Church, Pennsylvania; National Cathedral School and St. Alban's, of the District of Columbia; Woodberry Forest, Virginia Episcopal High School, St. Catherine's, Stuart Hall, St. Christopher's, and Chatham Episcopal Institute, of Virginia; St. Mary's, of North Carolina; Cathedral School, of Florida; Porter Military Academy, of South Carolina; St. Mary's and Sewanee Military Academy, of Tennessee; Harcourt Place, of Ohio; Grafton Hall, St. John's Military Academy, and Kemper Hall, of Wisconsin; St. Mary's and St. Alban's, of Illinois; All Saints', of South Dakota; Brownell Hall, of Nebraska; St. Katharine's, of Iowa; Shattuck, of Minnesota; College of the Sisters of Bethany, and St. John's Military Academy, Kansas; St. Mary's Hall and St. Mary's College, of Texas; Rowland Hall, of Utah; Harvard School, of California; St. Helen's, of Oregon; St. Margaret's, of Idaho; and St. Paul's, of Washington.

The influence of some of these schools in implanting in boys and girls correct ideals of life and conduct is too well known to need comment. Many of the most eminent and forceful figures of the life of to-day can trace their culture and influence to the religious and moral training by precept and example received in their early youth in one of these schools. There are many who realize that to such early training they owe the ideals and the strength of character which have enabled them to withstand the temptations of modern life, and they earnestly wish to give to their children and grandchildren the same priceless opportunity.

This Society gives substantial financial support

to a number of schools in the Appalachian Mountain region, where religious education and training are given to children who would otherwise receive little or none.

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